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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

April 26, 2001

Lois Lerner, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, S.E.
Washington, D.C. 20463

Re: Complaint Against Bush-Cheney 2000, Inc. and David Herndon,
as Treasurer

Dear Ms. Lerner:

Pursuant to the Commission's rules, 11 C.F.R. §111.4, the Democratic National Committee, 430 S. Capitol Street, S.E., Washington, D.C. 20003, hereby files this complaint against Bush-Cheney 2000, Inc. and David Herndon as Treasurer ("Bush-Cheney"), the authorized committee of George W. Bush and Richard Cheney as nominees of the Republican Party for President and Vice President of the United States in 2000, for failing to report to the Federal Election Commission any of the receipts or disbursements of the Bush-Cheney recount fund.

As detailed below, Bush-Cheney has publicly claimed that its recount fund is actually part of Bush-Cheney, the presidential campaign committee, thereby relieving the recount fund from the requirement to file periodic disclosure reports with the Internal Revenue Service, as mandated by the "stealth PAC" law enacted in 1999 (P.L. 106-230). Yet, Bush-Cheney has failed to include in any of its FEC reports any of the receipts or disbursements of the Recount Committee. Clearly, Bush-Cheney cannot have it both ways in order to avoid required public disclosure of its recount finances. If the Bush-Cheney recount fund is not required to file reports with the IRS because it is part of the

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presidential campaign committee, then Bush-Cheney must report the receipts and disbursements of the recount fund to the FEC.

The background of this situation is as follows. It has been publicly reported that the Bush-Cheney recount fund has raised at least \$7-8 million. See "W's Huge Recount Tab Unpaid," New York Daily News April 15, 2001, p. 47, attached hereto as Exhibit 1; "Bush Recount Fund Violates New Law, Democrats Charge," Washington Post, April 24, 2001, p. A21, attached hereto as Exhibit 2. The Bush-Cheney recount fund, however, has failed to report any of its receipts or disbursements to the IRS.

Section 527 of the Internal Revenue Code, as amended by P.L. 106-230, requires any political organizations with annual gross receipts of over \$25,000 to file a notice of status with the IRS, unless the organization is a federal political committee registered with and reporting to the FEC. (Internal Revenue Code §§527(i)(5)-(6)). Each section 527 organization thus required to file a notice of status with the IRS is also required to file periodic disclosure reports with the IRS, itemizing its contributions and expenditures, unless the organization is a state or local candidate or party committee. (Id. §527(j)).

The DNC assumed that, since Bush-Cheney had not included its recount finances in its FEC reports, Bush-Cheney had formed a separate recount committee in accordance with prior FEC rulings, FEC Advisory Opinion 1998-26 and Advisory Opinion 1978-92. Such a separate entity, controlled by a presidential campaign and devoted to prosecuting an election contest for the presidency, is clearly a "political organization" within the meaning of section 527 of the Internal Revenue Code, even though it would not be a federal political committee. The Gore/Lieberman Recount Committee was precisely such a separate entity, and therefore has filed all required notice of status and periodic disclosure reports with the IRS. The Bush-Cheney recount committee, however, never filed any notice of status and has failed to file any disclosure reports with the IRS. For this reason, on April 23, 2001, the DNC filed a complaint with the IRS, a copy of which is attached hereto as Exhibit 3.

Now, in response to the filing of this complaint with the IRS, Ben Ginsberg, counsel for the Bush-Cheney recount committee, has stated that the recount fund was "an arm of the Bush-Cheney campaign", i.e., "an adjunct to the presidential campaign." See Washington Post article attached as Exhibit 2 hereto. It is clear, therefore, that rather than establish a separate organizational entity to fund the recount effort, Bush-Cheney is claiming that its recount fund is part of Bush-Cheney itself—in other words, that Bush-Cheney is using its principal campaign committee to fund the recount.

In Advisory Opinion 1978-92, the FEC made clear that while a "separate organizational entity established solely for purposes of funding a recount effort would not become a 'political committee'" under the Federal Election Campaign Act of 1971, as amended (the "Act"), if a candidate's existing federal political committee "establishes any bank account for recount purposes the receipts and disbursements of those accounts would be reportable transactions of the committee." CCH Fed. Elec. Camp. Fin. Guide

Transfer Binder ¶5374 at p. 10380 (emphasis added). Again, the Advisory Opinion 1998-26, the FEC ruled that:

Under the Act, a Federal candidate raising and spending funds to defend against an election challenge may raise funds using her principal campaign committee, or she may set up a separate organizational entity established solely for the purposes of funding the defense effort. . . . A principal campaign committee receiving donations designated for such an effort should establish a separate bank account and the receipts and disbursements of the account would be reportable transactions of the committee.

1 CCH Fed. Elec. Camp. Fin. Guide ¶6279 at p.12,414 (emphasis added).

To be sure, under these Advisory Opinions, Bush-Cheney had the option of establishing a separate organizational entity to fund its recount effort. Such a separate entity would not be required to file reports of its receipts and disbursements with the FEC, but would certainly be required to file periodic disclosure reports under section 527(j) of the Internal Revenue Code.

In this case, however, counsel for Bush-Cheney has stated unequivocally that it has not formed a separate organizational entity, and is therefore not required to file reports with the IRS. It must be the case then, that Bush-Cheney has been using its principal campaign committee to fund its recount effort.

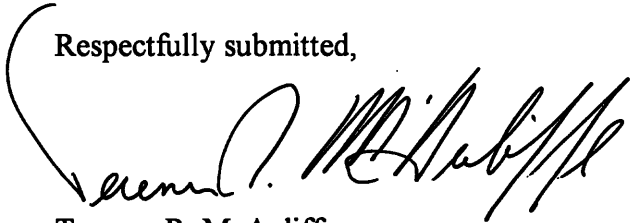
Bush-Cheney was therefore clearly required to disclose all receipts and disbursements of its recount fund in its FEC reports. Bush-Cheney's failure to do so is a blatant violation of the Act, 2 U.S.C. §§434(a)(3), 434(b), and the FEC's regulations, 11 C.F.R. Part 104.

In summary, there is simply no law that allows Bush-Cheney to establish a secret slush fund to hide the sources and uses of millions of dollars collected for the express purpose of winning the offices of President and Vice President of the United States. Either Bush-Cheney's recount fund is subject to disclosure requirements of section 527 of the Internal Revenue Code or it is subject to the disclosure requirements of the Act and the FEC's regulations. Bush-Cheney has now taken the position that is not subject to the former. Therefore it is subject to the latter—the disclosure requirements of the Act and the FEC's regulations.

Bush-Cheney has not complied with the Act's disclosure requirements. To the contrary, it has thumbed its nose at those requirements from the very first day of the recount effort through the present time.

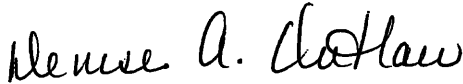
For these reasons, the FEC should find reason to believe that Bush-Cheney has violated the Act and the FEC's regulations, and should commence an investigation.

Respectfully submitted,


Terence R. McAuliffe
Chairman

Washington)
) ss:
District of Columbia)

Sworn to and subscribed before me this 26th day of April, 2001.



Notary Public

Denise A. Outlaw
Notary Public District of Columbia
My Commission Expires: July 15, 2004

My commission expires: _____

EXHIBIT 1

1 of 1 DOCUMENT

Copyright 2001 Daily News, L.P.

Daily News (New York)

April 15, 2001, Sunday SPORTS FINAL EDITION

SECTION: NEWS; Pg. 47

LENGTH: 752 words

HEADLINE: W'S HUGE RECOUNT TAB UNPAID

BYLINE: By TIMOTHY J. BURGER in Washington and EMILY GEST in New York DAILY NEWS STAFF WRITERS

BODY:

WASHINGTON - President Bush has raised more than \$7 million to fight the Florida recount battle that upheld his claim to the White House, but nearly four months later millions of dollars in legal fees remain unpaid.

Bush officials refused to reveal the final tab for the 40 days of legal combat that raged through election boards, a series of state courts and twice went to the Supreme Court. And many of the lawyers who submitted bills totaling hundreds of thousands of dollars concede they may never be paid.

Some ethics watchdogs criticized the secrecy, cloaking the millions of dollars in debts and funding that made a presidency possible.

One unanswered question is whether attorney Ted Olson of Gibson, Dunn & Crutcher worked for free when he argued Bush's case before the Supreme Court, or whether his tab is still pending.

Olson, of Gibson, Dunn & Crutcher, is the President's pick for U.S. solicitor general.

Lawyers at two firms told the Daily News they are owed about \$1.7 million combined, but spokesmen for several other firms referred questions to a Bush campaign attorney.

"Feel free to call Ben Ginsberg," said Michael Carvin of Cooper & Carvin in Washington.

Ginsberg curtly refused to disclose any recount funding details - what bills have been paid, for example, or whether any of the \$7.1 million is left or new fund-raising is underway.

"I'm the man, but I have absolutely no desire to talk about it. Recount's over. Go away," Ginsberg said before hanging up the phone. He again refused comment in another call.

One key Bush lawyer said his "understanding is they're still in the process now of raising the money."

"Any financial relationship with a client really is their business," said Fred Bartlit, whose firm, Bartlit Beck, spent weeks on the case.

Other attorneys were more open.

"We're all kind of waiting . . . to see whether we get paid or not," said Daryl Bristow of Baker Botts, a Texas law firm where Bush's recount chief, former Secretary of State James Baker, hangs his Stetson.

Bristow guessed that Baker Botts' fees were "somewhere knocking up against or over \$1 million."

But Bristow, whose firm received \$80,000 for expenses, said he got plenty from the experience.

"That's a very substantial contribution of time, obviously, so I hope over time they'll be able to raise some money," Bristow said. "If it doesn't happen . . . it was an important enough time in history for me that I'm satisfied. . . . I hope my partners are going to understand."

Another law firm that's waiting to be paid \$700,000 to \$1 million is Greenberg, Traurig, where Democratic partner Barry Richard helped boost Bush's credibility in Tallahassee. As of last week, the firm had only received a \$111,000 check.

"It's curious that they're not paying off the bills, but without knowing what their fund-raising is, it's hard to know what's going on," said Larry Noble of the Center for Responsive Politics. "They may figure that this is an administration in power and that they'll get paid back in other ways over time," because many of the law firms, including Greenberg, Traurig, also have lobbying practices.

The Gore campaign also ran up millions in bills and had raised at least \$3 million to pay them off. But much of its legal talent was donated, officials said.

"The vast majority of our work was pro bono," said Gore legal quarterback Ron Klain. An aide to Gore campaign counsel Lyn Utrecht said the only information about the Gore recount financing would be provided in a filing with the IRS tomorrow.

Gore's campaign did generally pay or reimburse living expenses, and paid some attorneys' fees - including some who had volunteered.

All meals were covered by either the Democratic National Committee or the Gore recount committee, according to Jessica Briddle, who worked as Klain's personal assistant in Florida and normally works for the secretary of the Democratic Party in Washington.

"For lunch and dinner, every day, it was never cheaper than \$400" to serve no fewer than 20 people, she said.

Mitchell Berger, for example, was reimbursed for nearly \$300,000 in expenses. While he waived his usual \$320-an-hour fee, Berger billed for the 10 to 12 lawyers on his staff who worked on the case at their normal hourly rate of \$125 to \$250.

"It would have been hard on us to write off three offices' work for 30 days," Berger said. "It'd be like the Daily News going a month without advertising."

GRAPHIC: Ben Ginsberg President Bush

LOAD-DATE: April 15, 2001

EXHIBIT 2

2025-03-10 2:21

Bush Recount Fund Violates New Law, Democrats Charge

DNC Chairman Asks IRS to Probe Unreported Spending

By George Lardner Jr.

Washington Post Staff Writer

Tuesday, April 24, 2001; Page A21

The Democratic National Committee yesterday accused the Bush-Cheney vote-recount fund of evading a new law aimed at unreported political spending and called for an IRS investigation of the fund's failure to publicly disclose its contributions and expenditures.

In a letter to Internal Revenue Service Commissioner Charles O. Rossotti, DNC Chairman Terence R. McAuliffe charged that the Bush-Cheney recount operation amounted to "the biggest 'stealth PAC' " ever created. He said it should have registered with the IRS under the law passed last year requiring secretive tax-exempt groups to reveal their finances.

Officials of the recount fund retorted sharply, saying that it was not covered by the new law but was an arm of the Bush-Cheney campaign that was exempt from reporting its finances. They said they have been disclosing contributions voluntarily on the campaign Web site although they have not listed any of their expenditures.

"The Democrats' understanding of the law appears to be flawed," said Ben Ginsberg, counsel to the Bush recount fund. He said that as an adjunct to the presidential campaign, it is governed by Federal Election Commission regulations and FEC rules do not require disclosures by recount committees.

"Presidential recounts of this magnitude are unanticipated under federal election law," he said.

The Bush-Cheney fund has raised about \$8 million and, officials say, paid the day-to-day expenses of the hundreds of political workers and lawyers who streamed into Florida for the recount dispute with Vice President Al Gore. It still has several million dollars in unpaid legal fees.

Daryl Bristow, a partner in the Houston firm of the recount operation's top lawyer, former secretary of state James A. Baker III, said yesterday that his firm submitted a bill for about \$1 million, covering the work of about 30 lawyers, but did not know whether it would be paid.

"You can chew up a lot of money in a crisis," he said. Bristow said the \$1 million was a fair calculation of "what we invested" but at the same time, "my firm has regularly engaged in activities for community causes where we give our time or do it for reduced fees. This one does have the obvious overtones of a political battle . . . but it does have a public service aspect to it, at least in my mind."

The law Congress passed last year covered secretive nonprofit political groups organized under Section 527 of the Internal Revenue Code and required them to disclose their political activities and who pays for them if they wanted to maintain their tax-exempt status.

Gore's recount committee registered under the law and its reports to the IRS through March 31 show contributions of \$3.7 million and expenditures of \$2.6 million. Lynn Utretcht, counsel to the committee, said the surplus is a bit lower now, but "we will wind up with some funds" that could be donated to a charitable organization or foundation of some kind.

While Ginsberg said there was no requirement of disclosure because the fund was "an FEC recount committee," DNC counsel Joe Sandler said it was just the kind of organization that, because it is not

required to report to the FEC, is required to report to the IRS under the new law.

"There's just no merit to their position," Sandler said. "They can't have it both ways. It's true they don't have to report to the FEC, but that is precisely the status of the stealth PACs at which this law was aimed."

In his letter, McAuliffe said that if the Bush-Cheney committee is not claiming exemption from taxation under Section 527, "it is difficult to understand how the millions of dollars received for the recount are exempt from tax at all. . . . Either the Bush-Cheney committee is guilty of violating the new law or it is engaging in a massive scheme of tax evasion."

While Ginsberg said he believed the fund was up to date in its voluntary Web site disclosures, the fund lists only individual contributions. A quick calculation yesterday showed they added up to \$7.1 million and apparently had not been updated since Dec. 11.

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EXHIBIT 3



DEMOCRATIC NATIONAL COMMITTEE

April 23, 2001

The Honorable Charles Rossotti, Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Dear Commissioner:

As Chairman of the Democratic National Committee, I am writing to request that the Internal Revenue Service immediately investigate the blatant violation by the Bush/Cheney 2000 recount committee of the law requiring political organizations to publicly disclose their contributions and expenditures. (Public Law 106-230, amending section 527 of the Internal Revenue Code of 1986 as amended (the "Code")).

As you know, this law was enacted last year by Congress in response to the growing use of "stealth PACs" to hide the sources and uses of millions of dollars of funds being secretly used for political purposes. Such "stealth PACs" are committees which are not required to register with and file reports with the Federal Election Commission, but nonetheless claim exemption from tax as political organizations.

Commendably, Congress took strong action to open up these secret political slush funds to public scrutiny. The new law requires a political organization that receives over \$25,000 and does not report to the FEC, to immediately file a notice of status with the IRS, on Form 8871. (Code §527(i)(1)(A)). The law also requires all such political organizations, other than state and local candidates and party committees, to file periodic reports with the IRS on form 8872 disclosing their contributions and expenditures. (Code §527(j)). These reports are available for public inspection on the IRS web site.

Now, the biggest "stealth PAC" ever created—the Bush/Cheney recount committee—has decided to flagrantly ignore this law. Although press reports confirm that the Bush/Cheney recount committee has received and spent millions of dollars, the committee has never filed a notice of status and has never filed any periodic disclosure reports.

As a result, millions of dollars that have been used directly to influence the election of the President and Vice President of the United States have been hidden from public view. Because the Bush/Cheney recount effort never officially filed their disclosure reports, no one knows the full extent of who contributed to Bush's recount effort that resulted in the award of Florida's electoral votes to the Bush/Cheney ticket.

No one knows to which special interests and wealthy donors the President and Vice President may be indebted. That is especially troublesome since contributions from individuals and PACs to a recount committee are not limited, under FEC regulations. And no one knows who received the millions of dollars that were spent by the Bush/Cheney recount committee.

In addition, recent news accounts on the outstanding debts of the Bush/Cheney recount committee highlight the lack of any disclosure of the committee's expenditures – and raise the question of what fundraising the committee is currently undertaking to pay off their debts.

It is difficult to imagine a situation that more seriously undermines the fundamental purposes of this law than the use of a secret slush fund—a “stealth PAC”—to wage an effort that determines who becomes the President of the United States.

There can be no question that the Bush/Cheney recount committee is a political organization within the meaning of section 527 of the Code. Although a recount committee is not a federal political committee required to register with and file reports with the FEC, FEC regulations directly govern the receipt of funds by such committees, providing, in particular, that a recount committee cannot receive or use funds from corporations, national banks, labor organizations, or foreign nationals. 11 C.F.R. §§100.7(b)(2) & 100.8(b)(20). The FEC regulates funding of recount committees precisely because recounts and election contests are related to elections. (FEC Advisory Opinion 1998-26 n. 6; House Doc. 95-44 at 40 (1977)).

An organization is described in section 527 of the Code, and is subject to the new law, if it is organized and operated primarily to accept contributions and make expenditures to influence the election of any individual to federal office, or the election of Presidential or Vice Presidential electors. (Code §527(e)(2)). It is ridiculous to suggest that the presidential recount committees were not operated to influence the election of Presidential and Vice Presidential electors.

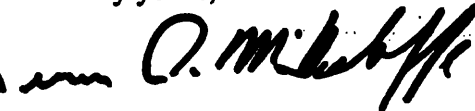
If the Bush/Cheney recount committee is not claiming exemption from taxation under section 527, it is difficult to understand how the millions of dollars received for the recount are exempt from tax at all. The Bush/Cheney committee, to our knowledge, has not applied for tax exempt status as a section 501(c) organization, and would not be entitled to such status in any event. Either the Bush/Cheney committee is guilty of violating the new law or it is engaging in a massive scheme of tax evasion.

In short, there is no justification whatsoever for the failure of the Bush/Cheney recount committee to comply with the law requiring public disclosure of its contributions and expenditures. In this regard, you should be aware that the Gore/Lieberman Recount Committee promptly filed its notice of status with the IRS (Form 8871) and has filed all required reports disclosing its contributions and expenditures (Forms 8872).

Twenty-five years after Watergate, no one should be allowed to be elected President of the United States by using a secret slush fund. In order to vindicate the fundamental purposes of the new law, and to serve the public interest in full disclosure of the contributions and expenditures of a committee directly devoted to achieving the election of the President of the United States, the IRS should promptly investigate the violations of the law by the Bush/Cheney recount committee; should require that all disclosure reports mandated by the law be filed; and should impose tax on the hidden contributions and expenditures as required by the law (section 527(j)(1)).

Please keep me advised of the progress and results of this investigation. Thank you for your time and prompt attention to this critically important matter.

Sincerely yours,



Terence R. McAuliffe
Chairman

cc: Steven T. Miller, Director, Exempt Organization Division, IRS